BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Application of SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) for Approval of its 2017 Electric Procurement Revenue Requirement Forecasts and GHG-Related Forecasts	A.16-04-018 (Filed April 15, 2016)

REPLY BRIEF OF THE ALLIANCE FOR RETAIL ENERGY MARKETS AND DIRECT ACCESS CUSTOMER COALITION REGARDING POWER CHARGE INDIFFERENCE AMOUNT VINTAGING ISSUES

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The Alliance for Retail Energy Markets ("AReM")[1] and the Direct Access Customer Coalition ("DACC")[2] submit this reply brief regarding power charge indifference amount ("PCIA") vintaging issues. On September 15, 2016, San Diego Gas & Electric Company ("SDG&E") filed its Motion of San Diego Gas & Electric Company (U 902-E) to Modify Proceeding Schedule. By email on September 18, 2016, assigned Administrative Law Judge Gerald F. Kelly granted the motion, approving the schedule change to allow opening briefs on this issue to be filed and served on October 3, 2016, and reply briefs on October 14, 2016.

As noted in the SDG&E Motion, AReM and DACC have raised the same issue regarding the PCIA calculation in the 2017 ERRA Forecast Application of Southern California Edison Company ("SCE") in Docket A.16-05-001. This issue is one of statewide import because the Commission has already sided with the AReM/DACC position in the PG&E ERRA proceeding, A.14-05-024, where PG&E presented separate PCIAs for pre-2009 Vintage and post-2009

[1] AReM is a California mutual benefit corporation formed by Electric Service Providers ("ESPs") that are active in California's Direct Access retail electric supply market. This filing represents the position of AReM, but not necessarily that of a particular member or any affiliates of its members with respect to the issues addressed herein.

[2] DACC is a regulatory advocacy group comprised of educational, governmental, commercial and industrial customers that utilize direct access for all or a portion of their electrical energy requirements. In the aggregate, DACC member companies represent over 1,900 MW of demand that is met by both direct access and bundled utility service and about 11,500 GWH of statewide annual usage.

Vintage direct access ("DA") customers.[3] This distinction was ratified in Decision 14-05-024, which clearly stated that, "PG&E followed adopted PCIA and CAM methodologies..."[4] It is imperative that this issue be resolved on a consistent statewide basis in each of the utilities' respective service territories. As this issue has already been resolved in the case of PG&E's ERRA proceeding, in accordance with the position espoused by the utility itself and concurred in by AReM and DACC without opposition from any other party, it is time that SDG&E be directed to cease its insistence on improperly charging the PCIA to its pre-2009 Vintage DA customers.

I. SDG&E MISCHARACTERIZES THE FUNDAMENTAL IMPORTANCE OF D.07-05-005

SDG&E attempts to portray AReM and DACC's interpretation of Decision ("D.") 07-05-005 as being inaccurate, stating that, "In the withdrawn testimony, AReM and DACC wrongly contend that in D.07-05-005, the Commission suddenly reversed course on its long-standing policy of avoiding cost shifting and ensuring bundled customer indifference by deciding that the PCIA for pre-2009 Vintage DA." This is a diversionary argument that ignores two fundamental facts:

> First, D.07-05-005 explicitly states that, "At the expiration of the DWR contract term, the applicability of the indifference requirement would also expire."[5]
>
> Second, PG&E's elimination of the PCIA for pre-2009 Vintage DA customers and its differentiation between pre- and post-2009 customers was approved by the Commission in Decision 14-05-024, which clearly stated that, "PG&E followed adopted PCIA and CAM methodologies..."[6]

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[3] *See*, A.14-05-024, PG&E 2015 Energy Resource Recovery Account and Generation Non-Bypassable Charges Forecast, Prepared Testimony of Donna L. Barry, pp. 9-8 and 9-9. May 30, 2014.

[4] D.14-05-024, at p 12 and p. 13

[5] D.07-05-005, at p. 27.

[6] D.14-05-024, at p 12 and p. 13

It is difficult to maintain plausibly that AReM and DACC have misinterpreted the phrase, "At the expiration of the DWR contract term, the applicability of the indifference requirement would also expire." The words speak for themselves. So, rather than directly addressing the issue, SDG&E's opening brief provides a lengthy history of direct access, the Cost Responsibility Surcharge and the indifference principle. It then concludes, albeit a tad wistfully, that the Commission could not possibly have meant what it said in D.07-05-005. But the Commission did say it, and it reinforced the statement by approving PG&E's elimination of the PCIA for pre-2009 Vintage customers. SDG&E should do the same and stop trying to burden customers served by its competitors with inappropriate and inaccurate charges.

II. SDG&E'S CLAIM THAT THE AREM/DACC POSITION CONFLICTS WITH THE CONSENSUS PROTOCOL IS INACCURATE

SDG&E states that the Consensus Protocol adopted in the 2014 ERRA proceeding, "shows that, contrary to AReM and DACC's argument, the Commission recognized that such sources of generation were appropriate for inclusion in the PCIA on a going-forward basis…"[7] While this is correct so far as it goes, SDG&E fails to explain that in its ERRA proceeding where the Consensus Protocol was approved, the DWR contracts were in still place and thus the termination of PCIA for pre-2009 Vintage DA customers was not an issue.[8] Raising it at that time would have simply have been an unneeded distraction in cases that needed to be completed

[7] SDG&E, at p. 7.

[8] Even though all of the DWR contracts that had been assigned to SDG&E for operation had expired at the end of 2013, DWR had a revenue requirement in place that was being shared among the three IOUs. (*See*, D.13-12-004 at 15, as the final DWR contract ran through September 18, 2015.) Thus, even though the contracts assigned to SDG&E for operation were expired, the trigger of the "DWR no longer buying power" had not been met. Furthermore, the Commission did not follow a "cost follows contract" allocation scheme, but instead assigned contracts so as to maximize their usefulness and shared all the contracts' collective excess costs among all three IOUs. (*See,* D.05-06-060). Thus, the fact that SDG&E did not have any assigned DWR contracts is immaterial.

on a timely basis, as is always the situation in ERRA proceeding. In fact, if AReM/DACC had tried to do so, SDG&E would undoubtedly have objected that the issue was out of scope and irrelevant given the fact that the DWR contracts were still in effect.

Furthermore, the Consensus Protocol explicitly states that its Calculations are illustrative only, as shown by this excerpt:

> Ratemaking Examples <u>are Illustrative Only</u> – Below, the Parties set forth four <u>hypothetical</u> scenarios discussing potential ways in which the Commission could adjust SONGS revenue requirements (i.e., costs recoverable in rates6) in the SONGS OII, and a general description of how the Protocol would implement the ratemaking associated with those scenarios.[9]

AReM and DACC took care to note in their joint 2013 ERRA brief that discussed the Consensus Protocol that:

> AReM and DACC wish to make it clear that their individual and collective agreement to the Protocol at this time <u>does not bar either or both of them from later proposing an alternative methodology</u> to deal with the issue addressed therein at a later date. <u>Subject to this caveat</u>, AReM and DACC request Commission approval of the Protocol in this docket and will make a similar request at a timely date in the SDG&E ERRA docket."[10]

Put simply, AReM/DACC was aware of the pre-2009 PCIA issue for some time and reserved the right to bring it up at the right time in an appropriate proceeding. That right time is now and AReM/DACC have raised this issue in a procedurally proper manner. Agreement to the Consensus Protocol in the 2013 ERRA did not in any manner bar raising the issue at this time, as the Consensus Protocol in fact specifies.

III. <u>THERE IS A NEED FOR STATEWIDE CONFORMITY ON THIS ISSUE</u>

Perhaps not surprisingly, SDG&E completely omits any discussion in its opening brief about the fact that the Commission has already ruled that PG&E acted appropriately in its

[9] Consensus Protocol, at p. 3 (emphasis added).

[10] January 27, 2014, AReM/DACC Opening Brief in A.13-08-004, at pp. 3-4 (emphasis added).

presentation of separate PCIAs for the pre-2009 Vintage and the post-2009 Vintage.[11] As noted in our opening brief, this differentiation was approved in Decision 14-05-024, which clearly stated that, "PG&E followed adopted PCIA and CAM methodologies..."[12] No party to A.15-06-001 opposed PG&E's ending the PCIA for pre-2009 Vintage DA customers. Significantly, the Commission did not reject PG&E's position or challenge elimination of the PCIA for pre-2009 Vintage DA customers.

It is important to have this issue resolved in a statewide, consolidated fashion. DA customers frequently have facilities in multiple utility service territories. It makes no sense for them to be told, "you have to pay PCIA in SDG&E's service territory but you don't for PG&E." Logically, those affected customers would respond "Why?" This is a question for which there is no good answer, despite SDG&E's protestations.

The Commission has opted for uniform statewide rules for direct access since its inception. For example, the "roadmap" decision, D.96-03-022, directed the utilities to prepare their proposed rules for retail competition.[13] Each utility responded with proposals that differed significantly from utility to utility, with the main similarity being their differing efforts to frustrate competition. A forerunner of AReM and DACC known as the Direct Access Alliance advocated strongly for a uniform statewide direct access tariff, which the Commission discussed and largely adopted in D.97-10-087. That decision noted:

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[11] *See*, A.14-05-024, PG&E 2015 Energy Resource Recovery Account and Generation Non-Bypassable Charges Forecast, Prepared Testimony of Donna L. Barry, pp. 9-8 and 9-9. May 30, 2014.

[12] D.14-05-024, at p 12 and p. 13

[13] The utilities were directed to submit, "proposals addressing eligibility and phase-in schedules are now due on August 30, 1996. The direct access filings should address, at a minimum, eligibility criteria, phase-in schedule, customer aggregation requirements and options, and a preferred metering approach." D.96-03-022, at p. 22.

> Our decision today is the result of a dynamic process regarding the direct access tariffs. Part of this process was to allow the parties an opportunity to develop a uniform tariff that could be used on a statewide basis.
> …
> Although we permit Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (Edison) to use its own tariffs on certain issues, we have attempted to move toward the use of a uniform direct access tariff for statewide use. Current system constraints prevent the use of such a statewide tariff at this time. However, in the near future, a uniform tariff is a distinct possibility. Such a tariff will eliminate inconsistent and differing rules among the utilities.[14]

Ultimately, the utilities' respective rules became virtually indistinguishable.[15] This is as it should be, since uniformity reduces confusion and is economically efficient. In summary, it is important for the Commission to provide consistent and uniform rules that are applicable to all customers, including those that have opted for direct access. The best way to accomplish this would be to direct that SDG&E should not charge the PCIA to pre-2009 Vintage customers, just as it already does for PG&E.

IV. CONCLUSION

AReM and DACC believe it to be clear that the PCIA is not applicable to pre-2009 Vintage customers. None of the arguments or decisions cited by SDG&E in its opening brief change the fact that the Commission has only on one occasion explicitly addressed the issue of the applicability of the PCIA to these customers. In that decision, D.07-05-005, the Commission clearly stated that, "At the expiration of the DWR contract term, the applicability of the indifference requirement would also expire."[16] The Commission should act consistently with what it has already done in D.15-12-022 in PG&E's 2016 ERRA Forecast proceeding and

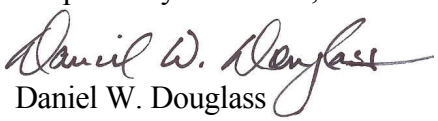
[14] D.97-10-087, at pp. 1-2 (emphasis added).

[15] *See*, Rule 22 for SCE and PG&E and Rule 25 for SDG&E.

[16] D.07-05-005, at p. 27.

provide statewide uniformity on this issue. SDG&E should be directed to cease its inconsistent application of the PCIA to pre-2009 Vintage customers.

Respectfully submitted,



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